Filed 1/10/19 Conservatorship of P.C. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

Conservatorship of the Person and Estate of P.C.,	B284724 (Los Angeles County Super. Ct. No. ZE031053)
PUBLIC GUARDIAN OF THE COUNTY OF LOS ANGELES, Petitioner and Respondent, v. P.C., Objector and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert S. Harrison, Judge. Affirmed.

Christopher L. Haberman, under appointment by the Court of Appeal, for Objector and Appellant.

Mary C. Wickham, County Counsel, Rosanne Wong, Assistant County Counsel, William C. Sias, Deputy County Counsel, for Petitioner and Respondent.

I. INTRODUCTION

Conservatee P.C. appeals from a judgment granting the petition by the Public Guardian of the County of Los Angeles (Public Guardian) for re-appointment as his conservator. The judgment followed a jury trial finding conservatee was gravely disabled pursuant to the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5000 et seq. (LPS Act).[1] Conservatee contends the trial court erred when it delivered a jury instruction that omitted an element from CACI No. 4000. Conservatee additionally argues he was denied due process because the Public Guardian did not request that the third element of CACI No. 4000 be omitted until after trial had begun. Alternatively, conservatee contends the jury verdict finding that he was gravely disabled was not supported by the evidence. We affirm.

---

[1] The LPS Act governs the detention and treatment of persons who are gravely disabled by a mental disorder. All future statutory references are to the Welfare and Institutions Code unless otherwise indicated.

II. BACKGROUND

A. *The LPS Act*

"The LPS Act governs the involuntary detention, evaluation, and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled. (§ 5150 et seq.) The Act authorizes the superior court to appoint a conservator of the person for one who is determined to be gravely disabled (§ 5350 et seq.), so that he or she may receive individualized treatment, supervision, and placement (§ 5350.1). As defined by the Act, a person is 'gravely disabled' if, as a result of a mental disorder, the person 'is unable to provide for his or her basic personal needs for food, clothing, or shelter.' (§ 5008, subd. (h)(1)(A).) [¶] . . . [¶] The party seeking imposition of the conservatorship must prove the proposed conservatee's grave disability beyond a reasonable doubt, and a jury verdict finding such disability must be unanimous. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219.) An LPS conservatorship automatically terminates after one year, and reappointment of the conservator must be sought by petition. (§ 5361.)" (*Conservatorship of John L.* (2010) 48 Cal.4th 131, 142-143.)

B. *Conservatorship Petition Hearing*

On February 14, 2017, the trial court conducted a hearing on the Public Guardian's petition for re-appointment as

conservator of the person and estate of conservatee.[2] On March 30, 2017, the trial court ordered the Public Guardian re-appointed as conservator.[3] Conservatee then filed a demand for jury trial. (See § 5350, subd. (d)(1) [conservatee may demand court or jury trial to determine whether he is gravely disabled].) Jury trial commenced on June 20, 2017.

C. *Trial*

1. Murray Weiss

Murray Weiss testified as a witness on behalf of the Public Guardian. Weiss is licensed to practice psychology in California. He has evaluated patients with mental disorders since 2000. At the time of trial, Weiss had evaluated over 1,000 patients. Weiss had testified in approximately 100 LPS conservatorship cases. Weiss was a forensic psychologist at the facility where conservatee was treated. Weiss had spoken with conservatee's psychiatrist three or four times during the past year. Weiss

---

[2] According to the Public Guardian, it filed its first petition for appointment as conservator of conservatee on January 16, 2007, and has filed annually since then.

[3] Although the conservatorship being appealed has expired as a matter of law (§ 5361), we find the appeal is not moot because, based on the arguments, there is a likelihood of recurrence of the controversy between the same parties which would avoid appellate review by mootness. (*Conservatorship of John L.*, *supra*, 48 Cal.4th at p.142, fn.2; *K.G. v. Meredith* (2012) 204 Cal.App.4th 164, 175; *Conservatorship of George H.* (2008) 169 Cal.App.4th 157, 161, fn. 2.)

examined conservatee in February 2017. Weiss also spoke with conservatee for 20 to 25 minutes on the day before his testimony, and spoke with staff members who were part of conservatee's treatment team. He reviewed: conservatee's medical records, two recent quarterly reports by conservatee's case managers, Weiss's personal notes from staff meetings regarding conservatee, and conservatee's medical chart for his medications, admissions records, and other psychiatric and medical diagnoses.

Conservatee has been diagnosed with schizoaffective disorder, which is both a thought and a mood disorder. Conservatee's thought disorder was delusional thinking. Conservatee frequently expressed thoughts that were clearly and patently untrue. Some thoughts were grandiose while others were paranoid.

Conservatee told Weiss that if released from conservatorship, he planned to move into a house in a neighborhood with his wife. Weiss, however, knew conservatee did not have a house or a wife. Weiss asked conservatee what he intended to do if his initial plan failed. Conservatee did not understand the question because he was so convinced of his delusion that an alternative did not exist. Conservatee claimed he owned a house in Arcadia. Conservatee also claimed the house was paid for years ago and that he had millions of dollars.

Conservatee told Weiss that his probate conservator had stolen hundreds of thousands of dollars from him which conservatee would get back. Conservatee discussed filing charges against the care facility for 160 counts of murder. Conservatee stated Dr. Bausta, his psychiatrist, and Mark Capella, his probate conservator, would be "called to count on those murders."

At the time of trial, conservatee was taking three different medications: an antipsychotic drug, a drug to control mood, and an anti-anxiety drug to help impulse control. Conservatee participated in treatment groups at his facility, and voluntarily took his medications.

In Weiss's opinion, conservatee lacked insight into his mental illness. Insight refers to a person's self-knowledge of mental illness that requires treatment. In February 2017, conservatee stated that he did not believe he had a mental illness. Conservatee "waffle[d]" on whether he would continue to take his medication if he were released from conservatorship. In February 2017, Weiss asked conservatee whether he knew what his medications were for. Conservatee responded that he did not.

Weiss testified that patients who do not believe they have a mental illness will discontinue their treatment quickly if able to do so. If conservatee were taken off conservatorship, it would only be a matter of days or weeks before conservatee stopped taking his medication.

Weiss opined conservatee was gravely disabled, unable to provide for his food, shelter, or clothing, and lacked sufficient insight to be a voluntary patient. Weiss did not believe there were any alternatives for conservatee other than a conservatorship.

2. Discussion of Jury Instruction

During the afternoon break, following Weiss's testimony, conservatee's counsel advised the trial court that the version of CACI No. 4000 that the court intended to read to jurors was missing the third element: "[CACI No.] 4000, Essential Factual

Element. There should be three. There's only two here. I know, [County Counsel], we've gone through this before when we forgot to add that."[4] Counsel for the Public Guardian responded, "We used to have it. That's standard, and it was removed." The trial court responded, "That's in the statute . . . . Is that in the [CACI] instruction? [¶] All right. We'll [have] to modify to conform to [CACI]. There is evidence on that issue. That's one of the arguments. [¶] So no alternative. [¶] Do you have that instruction with the language?"[5] Counsel for the Public

---

[4] It appears that the Public Guardian submitted the proposed jury instructions but it is unclear from the record when it did so.

[5] CACI No. 4000 provides: "[*Name of petitioner*] claims that [*name of respondent*] is gravely disabled due to [a mental disorder/impairment by chronic alcoholism] and therefore should be placed in a conservatorship. In a conservatorship, a conservator is appointed to oversee, under the direction of the court, the care of persons who are gravely disabled due to a mental disorder or chronic alcoholism. To succeed on this claim, [*name of petitioner*] must prove beyond a reasonable doubt all of the following: [¶] 1. That [*name of respondent*] [has a mental disorder/is impaired by chronic alcoholism]; [and] [¶] 2. That [*name of respondent*] is gravely disabled as a result of the [mental disorder/chronic alcoholism][; and/.] [¶] [3. That [*name of respondent*] is unwilling or unable voluntarily to accept meaningful treatment.]"

Prior to June 2016, CACI No. 4000 did not place brackets around element 3. The directions for use at that time nonetheless stated, "Element 3 may not be necessary in every case (see *Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1467 [(*Symington*)] . . . .)"

Guardian responded, "I'll have to go to my office and look for it real quick, but that's the first thing I'll look for because I noticed as of late that they're not putting it in there."

3. Conservatee

Conservatee testified at trial. He was an honorably discharged Navy veteran. His schizoaffective disorder was brought on by mortal combat fatigue. Conservatee would take his medications if released. He received $3,000 a month from the Veterans Administration (VA). Conservatee had disputes with his conservator about the use of his money.

Conservatee had taken psychotropic medication since he was 14 years old. He also had pneumonia once a year. If released from conservatorship, he did not expect to take medicine five to six times a day as he was doing at the time of trial. He agreed to take the medication that a VA psychiatrist gave to him.

Conservatee had a temporary and back-up plan if he was released. If released, conservatee would go to Discovery Four in Sunland, which was a board and care facility. While discussing his plan for release from conservatorship, conservatee stated, "Okay, and one other thing I would like to say on behalf of everybody here in this courtroom. I knew I wanted to be president of the United States of America when I was 10 years old—." His counsel responded, "I get it. A lot of us did." Conservatee then continued, "I have served my country—and guess how old I am. Just—Let's just say, 'How old is [conservatee]?' Don't give it away. It's a test. How old do you all think I am?" Conservatee stated that he and the Public Guardian were "fighting a battle with Arthur Capello right now."

Conservatee acknowledged having a mental illness. He added, "95 percent of the world have—have—have mental illnesses and they don't deal with them. I deal with people every day, [I] know. My TV goes on at 5:15 in the morning automatically, you know, because I got a— . . . in the Navy, you know—."

Conservatee claimed Weiss was wrong about conservatee's plan. He did not tell Weiss that he had a lot of money in the bank; and he owned property in Artesia, not Arcadia. Conservatee had taken medication since he was 14 years old because he had bronchitis and had a hard time breathing because of all the swimming that he did.

Conservatee last spoke with someone at the VA about three weeks prior to trial. He was hospitalized at Olive View[6] because he was "passing away at 2:02 in the morning." A friend asked him if there was anyone conservatee wanted to contact because he was passing away. The doctor stuck a needle above conservatee's heart due to "what they call[ed a] fever." He did not have a fever; he had a "very toxic disease called pneumonia." Conservatee explained that a bell rang 18 times before someone came to his room. When asked why the bell was ringing, conservatee explained it was because he was "dying, D-Y-I-N-G." He also stated he "was crucified on an upside down cross in Rome, St. Peter."

---

[6] This appears to be a reference to Olive View-UCLA Medical Center in Sylmar, California.

4. Closing Arguments

The parties then delivered closing arguments. During the Public Guardian's closing argument, counsel argued, among other things, that "[Conservatee] remains gravely disabled and unable to provide for himself and unable to articulate any reasonable response or alternative." The Public Guardian discussed the evidence that was relevant to what it called "the second factor[,]"[7] that "he cannot provide for his personal needs—food, clothing, or shelter—on his own without the assistance of the conservator."

The Public Guardian stated that the jurors would "be getting a jury instruction on the meaning of grave disability. And it has language that says if you find [conservatee] will not take his prescribed medication without supervision and that a mental disorder makes him unable to provide for his basic needs—food, clothing, or shelter—without such medication, you may conclude that he's presently gravely disabled. [¶] That same instruction also tells you, you may take—consider evidence into his lack of insight into his mental condition."[8]

---

[7] "Second factor" appears to be a reference to CACI No. 4000, which requires a finding that conservatee "is gravely disabled as a result of the mental disorder."

[8] We assume the Public Guardian was referring to CACI No. 4002, as that instruction includes the language quoted by the Public Guardian.

CACI No. 4002 provides: "The term 'gravely disabled' means that a person is presently unable to provide for his or her basic needs for food, clothing, or shelter because of [a mental disorder/impairment by chronic alcoholism]. [The term 'gravely disabled' does not include mentally retarded persons by reason of

Conservatee's counsel's closing argument focused on CACI No. 4002, which explains the term "gravely disabled": "There's a jury instruction that [the Public Guardian] was reading to you, but he forgot the most important part which is at the very end. I'll read it to you. It's about gravely disabled explained. It's [CACI No.] 4002. At the bottom it says in considering whether [the conservatee] is presently gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition." Counsel continued, "He's testified he wants to continue taking his medications. We're not dealing with an individual who is resisting treatment. We're not dealing with an individual who is telling you, 'Look. I don't have a mental illness. I don't need treatment. Let me go out on my own, and I'll

---

being mentally retarded alone.] [¶] [[*Insert one or more of the following*:] [psychosis/bizarre or eccentric behavior/delusions/hallucinations/[insert other]] [is/are] not enough, by [itself/themselves], to find that [*name of respondent*] is gravely disabled. [He/She] must be unable to provide for the basic needs of food, clothing, or shelter because of [a mental disorder/impairment by chronic alcoholism].] [¶] [If you find [*name of respondent*] will not take [his/her] prescribed medication without supervision and that a mental disorder makes [him/her] unable to provide for [his/her] basic needs for food, clothing, or shelter without such medication, then you may conclude [*name of respondent*] is presently gravely disabled. [¶] In determining whether [*name of respondent*] is presently gravely disabled, you may consider evidence that [he/she] did not take prescribed medication in the past. You may also consider evidence of [his/her] lack of insight into [his/her] mental condition.] [¶] In considering whether [*name of respondent*] is presently gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition."

survive.' [¶] No. We have an individual who acknowledges he needs treatment and he needs psychiatric medications for the rest of his life. He's willing to continue the treatment. We know he's not an individual who's on the street with nothing." Conservatee's counsel also discussed CACI No. 4005, which described proof beyond a reasonable doubt. Then, he discussed CACI No. 4002 again. He did not specifically refer to CACI No. 4000, although he did argue, "Have we heard that he doesn't want to take medications anymore as soon as he gets out? . . . No, we haven't heard that."

5. Jury Instructions

On June 22, 2017, the parties again discussed CACI No. 4000 and whether the trial court was required to instruct the jury on the third element. The Public Guardian had submitted a memorandum asserting that the third element need not be given. Conservatee's counsel argued the third element should be given. Because conservatee's counsel was served with the Public Guardian's position on this issue earlier that same day, the trial court permitted conservatee's counsel to file a response the following day.

On June 23, 2017, after receiving briefing from both parties, and over conservatee's objection, the trial court agreed with the Public Guardian that it was not required to instruct the jury on element 3 of CACI No. 4000. The trial court also advised the parties that it would modify CACI No. 4002 to add language that allowed the jury to consider whether conservatee was unwilling or unable to accept treatment.

The trial court permitted the parties to make additional arguments to the jury. The parties agreed to limit argument to two minutes per side. Each party delivered additional closing argument.

The trial court then delivered jury instructions, including the following: "The office of the Public Guardian claims that [conservatee] is gravely disabled due to a mental disorder and therefore should be placed in a conservatorship. In a conservatorship a conservator is appointed to oversee under the direction of the court the care of persons who are gravely disabled due to a mental disorder or chronic alcoholism. To succeed [on] this claim, the office of the Public Guardian must prove beyond a reasonable doubt all the following: [¶] that [conservatee] has a mental disorder, and that [conservatee] is gravely disabled as a matter of the mental disorder."

The trial court continued: "The term gravely disabled means that a person is presently unable to provide for his or her basic needs for food, clothing, or shelter because of a mental disorder. Psychosis, bizarre or [eccentric] behavior, delusions or hallucinations are not enough by themselves [to] find that [conservatee] is gravely disabled. He must be unable to provide for food, for shelter, clothing as described in the order [*sic*]. [¶] If you find that he cannot take care of himself within the description and a mental disorder which makes him unable to provide for his basic needs of food, clothing, shelter, [*sic*] then you may conclude that [conservatee] is gravely disabled. [¶] In determining whether [conservatee] is presently gravely disabled, you may consider evidence that he did not take prescribed medication in the past. You may also consider evidence of his lack of insight in his mental condition. [¶] In considering

whether [conservatee] is presently gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition. [¶] In considering whether [conservatee] is . . . gravely disabled, you may consider whether he is willing and able voluntarily to accept meaningful treatment and support."

6. Jury Deliberations and Verdict

During deliberations, the jury asked the court about the definition of "gravely disabled." As stated by the court, "The question from the jury is the definition of gravely disabled[, a]nd the thought is to re-read [CACI No.] 4002."[9] The trial court then re-read the instruction that corresponded to CACI No. 4002, as modified. The trial court agreed to provide written copies of CACI Nos. 4000, 4001 (which defines "mental disorder"), and 4002, as read, to the jury. Following deliberations, the jury returned a unanimous verdict, finding conservatee gravely disabled.

III. DISCUSSION

A. *Jury Instruction Was Not Erroneous*

Conservatee argues the trial court erred by omitting element 3 from the CACI No. 4000 instruction provided to the jury. "On appeal, we review the propriety of the jury instructions de novo. [Citation.] In considering the accuracy or completeness of a jury instruction, we evaluate it in the context of all of the

---

[9] The record does not include a copy of the jury question.

court's instructions." (*Caldera v. Department of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 44-45; *Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163, 1167.)

As noted, element 3 of CACI No. 4000 provides "that [conservatee] is unwilling or unable voluntarily to accept meaningful treatment." Conservatee cites *Conservatorship of Davis* (1981) 124 Cal.App.3d 313 (*Davis*) and *Conservatorship of Walker* (1987) 196 Cal.App.3d 1082 (*Walker*), in support of his position. The Public Guardian disagrees and contends the trial court was not required to instruct the jury on element 3, citing *Symington, supra,* 209 Cal.App.4th at page 1467, in support. The instructions for use for CACI No. 4000 indicates there is a split of authority as to whether a jury must be instructed on element 3.

1. *Davis*

In *Davis*, the trial court gave the following instruction to the jury in a LPS conservatorship proceeding: "'You are instructed that before you may consider whether [conservatee] is gravely disabled you must first find that she is, as a result of a mental disorder, unwilling or unable to accept treatment for that mental disorder on a voluntary basis. If you find that [conservatee] is capable of understanding her need for treatment for any mental disorder she may have and capable of making a meaningful commitment to a plan of treatment of that disorder she is entitled to a verdict of "not gravely disabled."'" (124 Cal.App.3d at p. 319.) At trial, the conservatee was found not gravely disabled by a jury. (*Id.* at p. 317.) The Public Guardian appealed, arguing that the trial court erred in

delivering this instruction. (*Id.* at p. 320.) The Court of Appeal disagreed, finding no prejudicial error. (*Id.* at pp. 329, 331.)

The court attempted to harmonize the purpose of the LPS Act as a whole, which included safeguarding individual rights, with section 5008, subdivision (h)(1), which defines the term "gravely disabled." (*Davis, supra*, 124 Cal.App.3d at p. 322.) The *Davis* court noted that section 5352 "provides that a petition to establish a conservatorship shall be filed only after a preliminary determination has been made that the person is gravely disabled as a result of mental disorder *and* is unwilling, or incapable of accepting, treatment voluntarily." (*Ibid.*, italics original.) Given the LPS Act's purpose, the court concluded, "a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship . . . ." (*Id.* at p. 329.)

2. *Walker*

In *Walker*, *supra*, 196 Cal.App.3d 1082, the conservatee was found to be gravely disabled following a jury trial. (*Id.* at p. 1088.) The trial court instructed the jury that the term "gravely disabled" means "'a condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing or shelter.'" (*Id.* at p. 1091.) The trial court further instructed: "'If you find that [conservatee] can survive safely in freedom by himself or with the help of [an] available, willing and responsible family member, friend or other third party and that [conservatee] is willing and capable of accepting voluntary treatment, then you must find

that [conservatee] is not gravely disabled.'" (*Ibid.*, italics removed.)

The Court of Appeal held the latter instruction was erroneous because it advised a jury that conservatorship was inappropriate only if the potential conservatee "can provide for his needs *and* is willing to accept treatment." (*Walker, supra*, 196 Cal.App.3d at p. 1092, italics original.) In reaching this conclusion, the *Walker* court interpreted *Davis*'s holding as follows: "The jury should determine if the person voluntarily accepts meaningful treatment, in which case no conservatorship is necessary. If the jury finds the person will not accept treatment, then it must determine if the person can meet his basic needs on his own or with help, in which case a conservatorship is not justified." (*Id.* at pp. 1092-1093.)

3. *Symington*

In *Symington*, *supra*, 209 Cal.App.3d 1464, the conservatee was found to be gravely disabled by court trial. (*Id.* at p. 1466.) The trial court concluded "it was not necessary to determine additionally whether the conservatee was unwilling or unable to accept treatment on her own . . . ." (*Ibid.*) The conservatee argued on appeal, "'Grave disability, *by definition*, includes an unwillingness and/or inability on the part of the proposed conservatee to voluntarily accept treatment for the mental disorder making the conservatee unable to provide for the necessities of life.'" (*Id.* at p. 1467, italics original.) The Court of Appeal disagreed. (*Ibid.*)

The court in *Symington* noted that "gravely disabled" as defined in section 5008, subdivision (h)(1) was "'[a] condition in

which a person, as a result of a mental disorder, is unable to provide for his basic personal needs for food, clothing, or shelter[.]'" (*Symington, supra*, 209 Cal.App.3d at p. 1468.) It also noted that the statutory definition of gravely disabled made no mention of a conservatee's refusal or inability to consent to treatment and that language concerning whether a proposed conservatee was unable or unwilling to accept treatment appeared only in section 5352. (*Id.* at pp. 1467-1468.)[10] The court determined that section 5352 was enacted to allow treatment facilities to initiate conservatorship proceedings at the time of admitting a patient when the patient may be uncooperative. (*Id.* at p. 1467.) That section was not enacted "as an additional element to be proved to establish the conservatorship itself." (*Ibid.*) "Indeed, many gravely disabled individuals are simply beyond treatment." (*Ibid.*) As the court explained, "The phrase is not intended to be a legal term, but is a standard by which mental health professionals determine whether a conservatorship is necessary in order that a gravely disabled individual may receive appropriate treatment. A person

---

10 Conservatee contends *Symington* was incorrectly decided because the court failed to acknowledge that unable and unwilling to accept treatment is discussed in sections 5350.5, 5250, subdivision (c), and 5252. Conservatee's argument is unavailing. Sections 5250 and 5252 concern certification for intensive and involuntary treatment, not conservatorship proceedings for gravely disabled persons. While section 5350.5 does concern conservatorships for gravely disabled persons, it was added by statute in 2016 (Stats. 2016, ch. 819, § 1), and thus did not exist when *Symington* was decided. Section 5350.5 also is not applicable as it concerns conservatorships established by the Probate Code and referrals for assessment.

who, as a result of a mental disorder, is unable to care for her food, clothing, and shelter needs is more likely than not unable to appreciate the need for mental health treatment. If a mental health professional determines this to be so, the person may appropriately be recommended for a conservatorship. Put another way, mental health facilities may initiate conservatorship proceedings before they accept a gravely disabled patient. But the terms are simply not interchangeable, and an individual who will not voluntarily accept mental health treatment is not for that reason alone gravely disabled." (*Id.* at p. 1468.) In so concluding, the court disagreed with *Walker*'s implicit holding. (See *Walker, supra*, 196 Cal.App.3d at pp. 1092-1093.)[11] It also distinguished the facts and the jury instructions at issue in *Davis*. (*Symington, supra*, 209 Cal.App.3d at p. 1469.) The court noted, "the issue resolved in [*Davis*] did not call for an analysis of the propriety of the instruction. And none was offered." (*Ibid*.)

4. *Symington* is persuasive

We agree with *Symington*. """Instructions in the language of an applicable *statute* are properly given."""" (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1131, quoting *Conservatorship of Gregory* (2000) 80 Cal.App.4th 514, 520; 7 Witkin Cal. Procedure (5th ed. 2008) Trial, § 268.) Here, the applicable statute is section 5350, subdivision (b)(1), which

---

[11] This division of the Second Appellate District of the Court of Appeal has expressed skepticism of *Walker*'s rationale. (*Conservatorship of George H., supra*, 169 Cal.App.4th at p. 162, fn. 3.)

provides that a conservator may be appointed "for a person who is gravely disabled as defined in subparagraph (A) of paragraph (1) of subdivision (h) of section 5008." Further, the potential conservatee "shall have the right to demand a court or jury trial on the issue of whether he or she is *gravely disabled*." (§ 5350, subd. (d)(1), italics added.) Section 5008, subdivision (h)(1) defines "gravely disabled" as "[a] condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).) Section 5350 provides an exception to the definition of "gravely disabled." Specifically, it states that a person is not "'gravely disabled' if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter." (§ 5350, subd. (e)(1).) Section 5350 provides no exception for persons who are able or willing to accept treatment. Moreover, section 5008, subdivision (h)(1)(A) makes no cross-reference to other provisions of the LPS Act that do refer to being unable or unwilling to accept treatment. (See, e.g., §§ 5350.5, 5250, subd. (c), 5252, and 5352.) The role of the court when construing a statute is not to insert what has been omitted. (Code Civ. Proc., § 1858; *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 939.)

We are persuaded that section 5352, which references a conservatee being unable or unwilling to accept treatment, allows "treatment facilities to initiate conservatorship proceedings at the time a patient is accepted where the individual may prove uncooperative," but does not add an element for proving a person is gravely disabled. (*Symington, supra*, 209 Cal.App.3d at

p. 1467.) Further, here, conservatee was subject to a reappointment petition pursuant to section 5361, which requires an opinion by two licensed professionals "that the conservatee is still gravely disabled as a result of mental disorder . . . ." (See *Conservatorship of Deirdre B.* (2010) 180 Cal.App.4th 1306, 1312 [reestablishment of conservatorship requires state "to prove beyond a reasonable doubt that the conservatee *remains* gravely disabled" (italics added)].) Thus, section 5352, and element 3 of CACI No. 4000, would not apply in this context.

B. *Due Process*

Conservatee argues that even if the LPS Act does not require it, due process mandates that the jury find a potential conservatee unwilling or unable to voluntarily accept treatment before finding him gravely disabled. "An LPS conservatee has due process rights under the [LPS Act] and the California Constitution." (*Conservatorship of George H., supra*, 169 Cal.App.4th at p. 162; accord, *Conservatorship of P.D., supra,* 21 Cal.App.5th at p. 1167.) Conservatee cites *Davis* in support of his argument. As discussed above, the issue on appeal in *Davis* was whether the trial court committed prejudicial error in delivering jury instructions for the establishment of a conservatorship. (*Davis, supra,* 124 Cal.App.3d at pp. 323-325, 329.) *Davis* did not discuss the propriety of the instruction in the context of a reappointment petition. Moreover, "because the private interests implicated in an LPS conservatorship are significant, 'several layers of important protections' have been built into the system [citation] to 'vigilantly guard[] against erroneous conclusions' in such proceedings [citation]." (*Conservatorship of John L., supra*,

48 Cal.4th at pp. 151-152.) Thus, in the context of a reappointment petition, due process does not require that the jury find a conservatee is unwilling or unable to accept treatment. (See, e.g., *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541-542 [citing provisions of the LPS Act, California Rules of Court, and *Conservatorship of Roulet, supra*, 23 Cal.3d at p. 235 as sufficient to protect federal and state due process rights such that the procedures described in *Anders v. California* (1967) 386 U.S. 738 and *People v. Wende* (1979) 25 Cal.3d 436 need not be extended to conservatorship appeals].)

Conservatee next argues that his due process rights were violated because he was not aware the Public Guardian would argue that element 3 of CACI No. 4000 should be excluded from the jury instruction until after the evidence had been submitted to the jury. Procedural due process requires that before a party is deprived of its liberty interests, it be given adequate notice and an opportunity to be heard. (*K.G. v. Meredith, supra*, 204 Cal.App.4th at p. 181; *Conservatorship of Moore* (1986) 185 Cal.App.3d 718, 725; see also *Conservatorship of John L., supra*, 48 Cal.4th at p. 150 ["we balance three factors to determine whether a particular procedure or absence of a procedure violates due process: the private interests at stake, the state or public interests, and the risk that the procedure or its absence will lead to erroneous decisions"].)

When the court initially indicated, prior to the close of evidence, that CACI No. 4000 should include element 3, the Public Guardian did not expressly disagree. Instead, counsel for the Public Guardian stated, "We used to have it. That's standard, and it was removed." The Public Guardian thus

expressed some confusion over the elements for establishing a conservatorship.

Regardless of any deficiencies in the notice initially provided by the Public Guardian, the trial court, after concluding that it agreed with the Public Guardian that jurors should not be instructed on element 3 from CACI No. 4000, and prior to delivering the jury instructions, permitted conservatee to submit additional briefing on the jury instruction. Conservatee filed a supplemental memorandum but did not make a motion to reopen evidence or to declare a mistrial. Moreover, after advising the parties about the final jury instructions, the trial court permitted, and the parties delivered, additional closing arguments. The conservatee did not mention CACI No. 4000 during its closing or supplemental closing argument. Although, as conservatee points out, counsel argued that conservatee was willing to accept treatment, counsel specifically stated that this factor was relevant to CACI No. 4002. Indeed, the trial court instructed the jury with a modified CACI No. 4002, stating, "In considering whether [conservatee] is presently gravely disabled, you may consider whether he is willing and able voluntarily to accept meaningful treatment and support." Given the remedial action by the trial court, we find no error. (See *Conservatorship of John L., supra*, 48 Cal.4th at p. 150 [when determining whether procedural due process was violated, "[w]e also consider "'the availability of prompt remedial measures'"'].)

C. *Equitable Estoppel*

Conservatee also argues that under the doctrine of equitable estoppel, the trial court should have included element 3

when instructing the jury with CACI No. 4000. The elements of equitable estoppel are: "'(1) [T]he party to be estopped . . . must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party . . . must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.'" (*J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 656.) We disagree with conservatee's position.

First, conservatee did not raise this argument in the trial court and has thus forfeited the argument on appeal. (*American Indian Health & Services Corp. v. Kent* (2018) 24 Cal.App.5th 772, 789; *Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 997.) Although conservatee argued that he had been "sandbag[ged]" and that the Public Guardian's memorandum of points and authorities supporting the exclusion of element 3 was untimely, conservatee did not specifically raise the doctrine of equitable estoppel in the trial court and thus the trial court did not make any findings on the applicability of this doctrine, including whether the Public Guardian intended the conservatee to act on its conduct. "'As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal; appealing parties must adhere to the theory (or theories) on which their cases were tried. This rule is based on fairness—it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal.'" (*Nellie Gail Ranch Owners Assn. v. McMullin, supra*, 4 Cal.App.5th at p. 997.)

Second, even assuming the conservatee has not forfeited this argument, he fails to cite to any case authority where application of equitable estoppel required the delivery of a jury

instruction that included an unnecessary element. We have found no such authority.

Third, on the merits, we would reject conservatee's argument because conservatee cannot demonstrate that he relied on the Public Guardian's conduct to his injury. Counsel for conservatee did not mention CACI No. 4000 during closing argument. Moreover, conservatee was permitted additional closing argument in light of the court's ruling. Finally, as we discuss below, there was substantial evidence that conservatee was gravely disabled. Given this record, application of equitable estoppel is unwarranted. (See *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1315 [equitable estoppel "'will not apply against a governmental body except in unusual [circumstances] when necessary to avoid grave injustice . . . .'"].)

D. *Substantial Evidence Supports Finding Conservatee Was Gravely Disabled*

Conservatee alternatively argues there was insufficient evidence to support a finding that he was gravely disabled under the LPS Act. We review a challenge to the sufficiency of the evidence for substantial evidence. (*Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1280; *Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 460-461.) Conservatee does not dispute that he has a mental disorder. He contends, however, that there was insufficient evidence that his schizoaffective disorder rendered him gravely disabled: "There was no evidence presented that as a result of [his] mental disorder he was unable to provide for his basic personal needs for food, clothing, or shelter." We disagree.

Weiss testified that conservatee lacked insight into his mental condition. When Weiss asked conservatee about what he intended to do if he were released from conservatorship, conservatee stated he planned to move into a house with his wife. Weiss knew that conservatee had neither a house nor a wife and thus concluded that this was not a viable plan for caring for his personal needs. Conservatee also told Weiss that he had millions of dollars, which was a delusional statement. In Weiss's opinion, if conservatee were released from conservatorship, he would act on his delusions, which would be unsafe for conservatee. Conservatee could not be a voluntary patient because he did not understand what his medications were for. Moreover, conservatee did not have insight into his mental illness and patients who lack insight are not likely to continue taking medication if released from conservatorship. Substantial evidence supports a finding that, based on his mental condition and lack of insight, if conservatee were released from conservatorship, he would be unable to provide for his food, shelter, or clothing.

Weiss's testimony was corroborated by that of conservatee, which reflected delusional thoughts. For instance, conservatee testified that he had been crucified upside down in Rome. Although conservatee stated that he would take his medication even if released from conservatorship, he also testified that he expected that he would not take his medication five or six times a day, as he was doing currently. Moreover, conservatee testified that he had been taking psychotropic medication since he was 14, but also stated that he took such medication for bronchitis. The jury's finding that conservatee was gravely disabled is well-supported by the evidence.

IV. DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

BAKER, Acting P.J.

MOOR, J.